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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,516	11/10/2000	Gerald R. Koefeldt	RPC-0485-PUS	5124

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b>	<b>Applicant(s)</b>	
	09/710,516	KOEFLDA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephen J. Castellano	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17, 19-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-21 and 23-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

omit Claim 17 recites the limitation "the plurality of standoff members" in lines 1 and 2.

There is insufficient antecedent basis for this limitation in the claim. There is no antecedent basis for the plurality of standoff members even though applicant has claimed "at least one standoff member."

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-15, 17, 19, 20, 23, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Gale.

A first interpretation of Gale discloses a crate comprising a unitary bottom panel having an upper surface, the bottom panel includes flaps (21, 22) and inserts (81, 82) attached together in a unitary construction, the upper surface of the bottom panel is defined by the bottoms of major wells (91), side walls (12, 13, 16, 17) form a unitary construction with the bottom panel, longitudinal and transverse dividers are formed by areas of the insert which are located outside of and extending between the major wells (91) and the upper portion of the inner side wall surfaces of the wells as best shown in Fig. 4 and 5, the dividers are attached to the upper surface

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of the bottom panel to form a unitary construction with the bottom panel, the standoffs are formed by the lower portion of the inner side wall surfaces of the major wells (91) which engage the lower portions of bottles (78), a pivoting lid (26 or 28) includes a recess (97) for engaging a bottle cap.

A second interpretation of Gale changes only in that cylindrical rib 96 forms a standoff for each container receiving area.

For claim 1 which contains the limitation of a divider assembly having a plurality of divider members ..., the divider assembly includes a plurality of low profile standoff portions having a container contact surface spaced from corresponding divider members, the divider assembly is provided by inserts 81 and 82 which are shown placed in the bottom of the of the shipping carton in Fig. 1 and shown in more detail in Fig. 4-7 with divider members (side walls 92) and standoff portions (cylindrical ribs 96).

Hopefully, applicant will think this a clarification and reference to Gale's drawing which had been requested.

The examiners definition of the word "unitary" corresponds with the dictionary meaning of "whole."

For claims 5, 15 and 23, the receiving areas are provided by the flat bottom surface of flaps 21 and 22 which are clearly capable of receiving a plurality of projections.

Claims 1-17, 19 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps ('814).

The divider assembly includes dividers (dividing walls 116, 216) and standoff portions (formed by support areas 122 with a raised circular rib, a longitudinal rib and a transverse rib).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 8, 10-13, 20, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Hammett ('836) or Hepp.

Gale discloses the invention except for the standoffs being attached to a divider.

Hammett and Hepp teach dividers with standoffs attached thereto. It would have been obvious to add the divider with attached standoffs in order to reinforce the standoffs and space the divider from the bottles to prevent label damage.

Claims 5, 6, 15, 16, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Apps.

The combination discloses the invention except for the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid. Apps teaches the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid. It would have been obvious to add the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid in order to stack the crates with more stability since this arrangement prevents sliding.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Jamison.

Gale discloses the invention except for the lid lock. Jamison teaches a lid lock. It would have been obvious to lock the lid to prevent unauthorized access to the contents of the crate.

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In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703)-308-1035.



Stephen Castellano  
Primary Examiner  
Art Unit 3727

October 8, 2002